Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

FEI JIANG,

Petitioner,

v.

UNITED STATES ATTORNEY GENERAL,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The United States Court of Appeals for the Second Circuit has held in the captioned matter that an asylum applicant, here the petitioner, must demonstrate that his fear of persecution on account of his opposition to public election fraud has been manifestly "directed toward a government institution" as opposed to "merely against individuals whose corruption was aberrational" for the purpose of meeting his burden of proving a well-founded fear of persecution on account of political opinion. This holding raises two important legal questions regarding the burden of proof which an asylum applicant must meet in establishing a well-founded fear of persecution on account of an actual and/or imputed political opinion that warrant immediate review by this Court in light of different standards of proof as applied in the Second Circuit in the captioned matter as opposed to those applicable in the Ninth Circuit:

1. Whether a proper assessment of the credibility of an asylum applicant who claims a well-founded fear of persecution on account of opposition to public election fraud can be bifurcated from a determination of whether the applicant's said fear qualifies for fear of persecution on account of political opinion under INA; and

2. Whether the applicant's fear of persecution on account of his political opinion may be established by his actual and imputed opposition to public election fraud as a form of government corruption on basis of direct as well as circumstantial evidence indicating

QUESTIONS PRESENTED – Continued

that government action taken against the applicant in the form of attempted police arrest could not have been initiated for any legitimate prosecutorial purpose, whether or not the applicant's opposition to such government corruption was perceived as towards the government as an institution or merely towards "individuals whose corruption was aberrational", regardless of the applicant's own intent.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the United States Court of Appeals for the Second Circuit.

The petitioner here and petitioner below are Fei Jiang.

The respondent here and respondent below are the United States Attorney General.

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The opinion of the Court of Appeals for the Second Circuit in this matter as issued in the form of a summary order as filed on November 9, 2005, has not been reported in the Federal Reporter per order of the Second Circuit. Neither has the opinion of the Board of Immigration Appeals whose agency decision was the subject of the underlying petition for review before the Second Circuit been published in any media. The decision of the immigration judge presiding over the petitioner's removal proceedings was likewise unpublished.

JURISDICTION

The Court of Appeals for the Second Circuit entered its summary order on November 9, 2005. This Court has jurisdiction under 28 U.S.C., Section 1254(1).

STATUTES INVOLVED

This case involves provisions of the Immigration and Nationality Act reflecting Amendments by IIRARIA (Pub. L. 104-208, 110 Sta. 3009 (September 30, 1996), Section 101(a)(42) (8 U.S.C., Section 1101(a)).

STATEMENT OF THE CASE

This is a case whose review by this Court can resolve persistent conflicts between the Second Circuit and the Ninth Circuit, and hence potentially between and among other circuits as well, on the important issue of the standard

for assessing the meeting of burden of proof by an asylum applicant for establishing a well-founded fear of persecution on account of political opinion as perceived and hence imputed by the asylum applicant's persecuting government as based on both direct and circumstantial evidence, regardless of that applicant's actual intent. It further raises the critical issue of the role of credibility determination in making a fair and balanced assessment on the issue of burden of proof by such an applicant.

Fei Jiang, the petitioner in the caption matter, petitioned the United States Court of Appeals for the Second Circuit ("Second Circuit") for review of a decision of the Board of Immigration Appeals ("BIA") summarily dismissing his appeal from the decision of an immigration judge below ("IJ") who denied the petitioner the relief of asylum being sought on account of his opposition to fraud committed in a public election by a township government in Fujian Province of China, where Jiang originated.

In denying the underlying petition for review, the Second Circuit declined to address the critical issue of the IJ's erroneous adverse credibility finding and narrowly focused on the legal definition of what constitutes political opinion for the purpose of the meeting of burden of proving a well-founded fear of persecution by an asylum applicant on account of one of the grounds enumerated in the Immigration and Nationality Act ("INA"), Section 101(a)(42)(A), 8 U.S.C., Section 1101(a)(42)(A). In doing so, the Second Circuit improperly bifurcated the issue of credibility determination from the issue of the meeting of burden of proof by an asylum applicant as if they were analytically unrelated, thus rendering an asylum applicant's credible testimony meaningless in meeting his burden of proof in seeking the relief of asylum.

Review is therefore urgently needed not only to resolve the conflict between the Second Circuit and the Ninth Circuit on the issue of the evidentiary weight to be assigned to the credible testimony of an asylum applicant in assessing the well-foundedness of the applicant's fear of persecution on account of his political opinion, whether that opinion is actually held or imputed, but also to resolve the issue of what constitutes political opinion under INA, Section 101(a)(42)(A) in the context of imputed opposition to government corruption in the form of public election fraud, regardless of the applicant's actual political view being expressly manifested or not.

A. Factual Background

The petitioner is a citizen and national of the People's Republic of China, who last entered the United States as an arriving alien on September 9, 2000. See Joint Appendix before the Second Circuit ("JA"), at 295.

Thereafter, the petitioner filed a defensive application for asylum in his removal proceedings in immigration court and filed corroborating documents in support of his asylum claim. Pet. App., at 18a-27a. Further, on February 8, 2002, the petitioner testified before the IJ as his own witness. JA, at 52-89.

According to his written application and testimony as corroborated by his eleven supporting documents (JA, at 135), while in China the petitioner, who graduated from senior high school, volunteered twice as election worker for village chief elections in his home area, the second occasion being in September, 1999. Id., at 62.